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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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GABRIEL FRANCIS,	: Case No. 1:17-cv-3310
	:
Plaintiff,	: (Removed from the Supreme
	: Court of the State of New
v.	: York, County of Kings, Case
	: No. 506584/2017)
BLUESTEM BRANDS INC. d/b/a FINGERHUT,	:
	: NOTICE OF REMOVAL
Defendant.	: BY DEFENDANT
	: <u>BLUESTEM BRANDS, INC.</u>
	:
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**TO THE CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK:**

Please take notice that Defendant Bluestem Brands, Inc. (“Bluestem”) removes the above-titled action from the Supreme Court of the State of New York, County of Kings (“the Supreme Court”), in which the action is currently pending, to the United States District Court for the Eastern District of New York on the grounds that this Court has original and removal jurisdiction over this civil action pursuant to 28 U.S.C. §§ 1331, 1441, 1446 and all other applicable bases for removal. Bluestem states as follows in support of this notice:

PLEADINGS AND FILINGS IN SUPREME COURT

1. On or about April 3, 2017, Plaintiff Gabriel Francis (“Plaintiff”) filed a Verified Complaint in the Supreme Court of the State of New York, County of Kings, captioned *Gabriel*

Francis v. Bluestem Brands d/b/a Fingerhut, bearing Index No. 506584/2017. A true and correct copy of the Summons and Verified Complaint filed by Plaintiff in the Supreme Court Action is attached as Exhibit A.

2. On or about April 28, 2017, Plaintiff filed an Amended Summons and Amended Verified Complaint, captioned *Gabriel Francis v. Bluestem Brands Inc. d/b/a Fingerhut*, Index No. 506584/2017 in the Supreme Court. A true and correct copy of the Amended Summons and Amended Verified Complaint filed by Plaintiff in the Supreme Court Action is attached as Exhibit B.

3. On May 4, 2017, Bluestem was purportedly served with a copy of the Amended Complaint. Bluestem was not served with a copy of the original Complaint.

TIMELINESS OF REMOVAL

4. This action has not been previously removed to federal court.

5. This Notice of Removal is timely filed. Under 28 U.S.C. § 1446(b) the Notice of Removal may be filed within thirty days of receipt of the initial pleading setting forth the claim. Specifically, 28 U.S.C. § 1446(b), provides that the Notice of Removal is to be filed within thirty days of receipt “through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based . . .” Bluestem has filed this Notice of Removal within 30 days of the first date upon which it was served with any paper giving it knowledge that the action was removable, i.e., the Amended Complaint.

ORIGINAL AND REMOVAL JURISDICTION

6. In the Supreme Court Action, Plaintiff alleges violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.* (See Amended Verified Complaint ¶¶ 1-2, 10-17.) Accordingly, the Supreme Court Action presents a federal question within the

meaning of 28 U.S.C. § 1331, because it involves claims and/or issues arising in whole or in part under the Constitution, laws, or treaties of the United States. Therefore, this Court has original jurisdiction over the Supreme Court Action.

7. Under 28 U.S.C. § 1441 (a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

8. Plaintiff’s Amended Complaint presents a federal question for determination, i.e., whether Bluestem violated the TCPA. Accordingly, this case is a civil action over which this District Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and is one which may be removed to this Court by Bluestem pursuant to 28 U.S.C. § 1441 *et seq.* in that it arises under Title VII. (*See generally* Exhibit B).

9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a).

10. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon or otherwise received by Bluestem are attached hereto as Exhibit B.

11. In accordance with 28 U.S.C. § 1446(d), Bluestem will give prompt written notice of this Notice of Removal to all adverse parties and to the Clerk of the Supreme Court. A copy of the Notice of Filing of Notice of Removal to the Supreme Court of the State of New York, County of Kings is attached hereto as Exhibit C.

12. By filing this Notice of Removal, Bluestem does not waive any defenses either procedural or substantive, which may be available to it, including, but not limited to, its right to contest *in personam* jurisdiction, improper service of process or the absence of venue in this Court or in the court from which the action has been removed.

WHEREFORE, Bluestem removes the Supreme Court Action from the Supreme Court of the State of New York, County of Kings to the United States District Court for the Eastern District of New York.

Dated: New York, New York
June 1, 2017

Respectfully Submitted,

MCGUIREWOODS LLP

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